

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



June 14, 2006

Agenda ID # 5742
Adjudicatory

TO: PARTIES OF RECORD IN CASE 05-10-003

This is the draft decision of Administrative Law Judge (ALJ) Yacknin. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure," accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages.

Comments must be filed with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 2.3 and 2.3.1. Electronic copies of comments should be sent to ALJ Yacknin at hsy@cpuc.ca.gov. All parties must serve hard copies on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail or other expeditious methods of service. The current service list for this proceeding is available on the Commission's website, www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:avs

Attachment

Decision **DRAFT DECISION OF ALJ YACKNIN** (Mailed 6/14/2006)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Wilmot McCutchen,

Complainant,

vs.

Pacific Gas and Electric Company and City of
Orinda,

Defendants.

Case 05-10-003
(Filed October 3, 2005)**OPINION DENYING THE PETITION OF WILMOT McCUTCHEN
FOR MODIFICATION OF DECISION 06-01-031**

Wilmot McCutchen petitions for modification of Decision (D.) 06-01-031 in this proceeding. D.06-01-031 dismissed McCutchen's complaint against Pacific Gas and Electric Company (PG&E) and the City of Orinda (City) for failure to state a claim upon which relief may be granted. The complaint alleged that PG&E and the City violated Rule 1¹ of the Commission's Rules of Practice and Procedure by falsely stating, in their joint Application (A.) 05-06-002 for

¹ "Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by also an artifice or false statement of fact or law." Subsequent rules citations are also to the Rules of Practice and Procedure.

authority to quitclaim a portion of an existing transmission line's easement, that the transmission line's voltage is 115 kilovolt (kV).² The complaint asserted that the transmission line voltage is 220 kV, and that PG&E's and the City's false statement misled the Commission into waiving review under General Order 131-D and shirking its responsibilities as lead agency under Rule 17.1(i)(A)(1). D.06-01-031 found that, regardless of the voltage of the transmission line, the application for authority to quitclaim the easement was not subject to review under General Order 131-D (Conclusion of Law 1) and the Commission was not the lead agency for review (Conclusion of Law 2).

McCutchen asserts that Finding of Fact 5 ("The transmission line and tower remain on the portion of the easement which was not quitclaimed") and Conclusion of Law 3 ("PG&E's use of the remaining easement area is consistent with its statement that the quitclaimed area is no longer necessary or useful in the performance of its duties") are inconsistent with the deed records, which indicate that PG&E quitclaimed the entire easement, including the portion of the easement which PG&E continues to use for the operation of its transmission line and tower.

PG&E asks that the petition be denied. We agree with PG&E that the application for authority to quitclaim the easement describes the easement as partial; D.05-07-017 approving the application grants authority to quitclaim only

² The Commission approved the A.05-06-002 in D.05-07-017. McCutchen also petitioned to modify D.05-07-017. In substance, McCutchen's position regarding D.05-07-017, approving the PG&E application, is virtually the same as his position regarding D.06-01-031, denying his complaint, namely, that the transmission line's voltage is not 115 kV, and the quitclaim would deprive PG&E of its ability to continue to use the transmission line and its tower. The Commission denied the petition to modify the application decision in D.06-02-009.

a partial easement; and the City's Resolution No. 19-05, which approved the grant deed from the owner of the property over which PG&E has easement rights, specifically refers to the transferred property as "a negotiated part of the property."

No other matters require discussion. We are not persuaded to modify D.06-01-031. (Rule 47(h).)

Comments on Draft Decision

The draft decision of Administrative Law Judge (ALJ) Yacknin in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the rules of Practice and Procedure. Comments were filed on _____.

Assignment of Proceeding

Dian Grueneich is the Assigned Commissioner and Hallie Yacknin is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E sought, in A.05-06-002, and the Commission granted, in D.05-07-017, authority to quitclaim a partial easement to the City of Orinda.
2. The grant deed approved by the City of Orinda is consistent with PG&E's application for, and the Commission's grant of, authority to quitclaim a partial easement to the City of Orinda.

Conclusion of Law

This petition is without merit and should be denied.

ORDER

IT IS ORDERED that:

1. The petition for modification is denied.
2. Case 05-10-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated June 14, 2006, at San Francisco, California.

/s/ ANTONINA V. SWANSEN

Antonina V. Swansen

***** SERVICE LIST *****

Last Update on 17-NOV-2005 by: LIL
C0510003 NOPOST

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